

EX PARTE OR LATE FILED

BEFORE THE

DOCKET FILE COPY ORIGINAL

ORIGINAL

Federal Communications Commission

WASHINGTON, D.C. 20554

JUN 25 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Amendment of the Commission's Rules to)
Establish Rules and Policies Pertaining)
To a Non-Voice, Non-Geostationary)
Mobile-Satellite Service)

CC Docket No. 92-76

To: The Commission

SUPPLEMENTAL COMMENTS OF STARSYS GLOBAL POSITIONING, INC.

STARSYS Global Positioning, Inc. ("STARSYS"), by its attorneys and pursuant to the leave requested in the motion filed concurrently herewith, hereby submits these Supplemental Comments in response to the new material dbX Corporation ("dbX") introduced in its reply comments in the above-captioned proceeding. In particular, STARSYS urges the Commission to reject as fundamentally flawed and unduly burdensome the regulatory proposals dbX proffers with reference to Non-Voice, Non-Geostationary Mobile-Satellite Service ("NVNG MSS") systems such as the one proposed by STARSYS.

I. INTRODUCTION

In its reply comments, dbX responded primarily to its own comments, and not to the comments of STARSYS and other parties, when it submitted "proposed rules to promote competition and a technical analysis demonstrating that frequency assignments

No. of Copies rec'd
List A B C D E

0 + 4

can be crafted to permit additional entry without creating undue burdens on the proposed operations of the existing NVNG MSS applicants." dbX Reply Comments at 3. dbX bases its call for burdensome and restrictive regulation of the NVNG MSS service on its belief that the two commercial applicants in the Commission's initial NVNG MSS processing group will duopolize the market and manipulate the proposed regulations to exclude future entry. See, e.g., dbX Comments at 8 ("existing licensees will be in position to be completely intransigent and at the same time be fully compliant with the Commission's Rules. This will allow NVNG MSS licensees to use the coordination process to block future entry. It would be naive for anyone to conclude that a licensee would not use this lax regulatory regime for competitive purposes").

STARSYS takes strenuous objection to the premise of dbX's argument. STARSYS is not out to abet the duopolization of the NVNG MSS market, and the Commission certainly would not accept the role of dupe in such a scheme. The Commission's responsibility in this proceeding is to establish service rules for the NVNG MSS service that are consistent with its statutory mandate to "make available, so far as possible, to all of the people of the United States a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges" 47 U.S.C. § 151. It would be inconsistent with that mandate for the Commission to throttle the nascent industry and the current applicants with

regulations that cast a cloud over the future of the service and jeopardize any prospects for economic viability merely to increase the service's appeal to putative future applicants.

Right now, there are three proposals for NVNG MSS systems pending before the Commission. The rules proposed by the Commission in Amendment of the Commission's Rules to Establish Rules and Policies Pertaining to a Non-Voice, Non-Geostationary Mobile-Satellite Service, FCC 93-28 (released February 10, 1993) ("NPRM"), subject to the minor modifications suggested by STARSYS and some others, provide sufficient opportunities for future entry into the frequencies that were recently allocated for use by NVNG MSS systems. Additional steps designed ostensibly to protect the prospect of future entry, all of which would be taken at the expense (both in terms of capacity and uncertainty) of the applicants in the initial processing group, are not warranted.

In other words, the proposals in the NPRM strike an appropriate balance between the need to allow the operators in a new satellite service sufficient flexibility to develop service configurations that will meet the needs of the user markets that are to develop, and the Commission's desire to provide an opportunity for new entry by future applicants. dbX's eleventh-hour offering of onerous regulations and self-serving technical analyses -- all of which are intended to benefit a second NVNG MSS processing group at the expense of the first -- should not be permitted to undermine the efforts of STARSYS and

the others who conceived the NVNG MSS service more than three years ago, and who are largely responsible for bringing it to fruition.

II. DISCUSSION

A. dbX Has Failed To Show That Future Entry Will Be Restricted Under The Frequency Assignment Plan Proffered By The NVNG MSS Applicants.

Erroneously equating the reality of a limited amount of presently-available NVNG MSS spectrum with an attempt by the applicants and the Commission to limit or preclude future entry, dbX calls upon the Commission to prevent the development of a duopoly for the commercial NVNG MSS by adopting specific rules and policies that would severely curtail the amount of spectrum the pending commercial applicants would be authorized to use. See dbX Comments at 5-7, 8. dbX's fears of duopoly are without foundation. As a party that first surfaced after three years of NVNG MSS proceedings, and that is circumspect about its intentions. dbX is understandably unaware of the history of this

a series of fatal oversights. Indeed, the analysis fails to support dbX's decidedly non-technical contention that the market is poised to be duopolized by STARSYS and Orbcomm.

First, dbX's technical analysis completely ignores the fact that NVNG MSS systems will share frequencies with government users. As a result, dbX neglected to acknowledge that in any assessment of the spectrum available for future systems, coordination compromises would come not only from existing NVNG MSS systems, but from government users as well. See NPRM at

Proposed Rule 25.142(b)(2). Because dbX apparently assumes that

the proposed systems." dbX Reply Comments at 10. The technical analysis appended to dbX's reply comments, indeed the reply comments themselves, are bereft of any analysis of the economic impact that the severe power limitations and reductions in spectrum usage dbX so blithely proposes would have on STARSYS.

The reality, of course, is that the dbX proposal would have a devastating economic impact. As STARSYS pointed out in its Reply Comments, the applicants' frequency assignment plan calls for STARSYS to utilize the bare minimum amount of NVNG MSS spectrum that it requires in order to establish an economically viable system. See STARSYS Reply Comments at 12-13 & n.10. dbX's call for preemptive power and spectrum usage limitations in both the 148-149.9 MHz and 137-138 MHz bands would threaten the viability of the STARSYS project by reducing the range of service options and the ability of STARSYS to meet its customers' demands. The Commission has always striven to maintain maximum flexibility for new satellite services, consistent with its statutory mandate. See, e.g., AMSC Subsidiary Corporation, FCC 93-243, slip op. at 6 (released June 14, 1993) (Commission approves flexible system design for satellite system to be used in a new satellite service, noting that "[a]lthough high demand is projected, specific markets are not yet developed, and the geographic and service concentrations of potential users is unknown at this time"). The severe capacity reductions STARSYS would experience upon the Commission's adoption of the measures dbX proposes to protect potential second round applicants not

only violates this principle, it renders nugatory the cut-off protections STARSYS is entitled to as a member of the Commission's first NVNG MSS processing group.

Finally, dbX recognizes, as did the Commission in its NPRM, that additional NVNG MSS spectrum is poised to become available in 1997 and beyond. Though dbX attempts to brush this imminent increase in available spectrum off as too distant to be of use, the reality is that a system that is first applied for today would not be likely to come on line much before 1997.

In short, dbX's technical analysis simply does not support dbX's central tenet that approval of the applicants' proposed frequency plan would consciously or otherwise freeze out future competition. It should be rejected.

B. The Regulatory Proposals Advanced By dbX Are Based On Its Misapprehension Of The Prospects For Future Entry, And Would Jeopardize The Prospects For The NVNG MSS Service To Succeed In The Marketplace.

STARSYS pointed out in its Reply Comments that dbX had failed to lay a factual predicate to support any of its request for the adoption of policies that would assertedly facilitate the establishment of a competitive NVNG MSS marketplace. See STARSYS Reply Comments at 12-14. Although the fundamental deficiencies of its central premise remain, dbX has now proceeded to recast the policy proposals from its initial comments into proposed regulations for the NVNG MSS.

The Commission should reject dbX's proposals. dbX's discussion of frequency assignment and coordination matters, and

As STARSYS explained in its Reply Comments, and irrespective of dbX's failure to demonstrate the need for a traffic fill/anti-warehousing regulation, the fact remains that any proposal limiting an NVNG MSS system's present access to an

As STARSYS explained in its Reply Comments, and irrespective of dbX's failure to demonstrate the need for a traffic fill/anti-warehousing regulation, the fact remains that any proposal limiting an NVNG MSS system's present access to an

dbX's proposal to eliminate the rule provision relieving licensees of the obligation to re-engineer applicants' systems should also be rejected. The provision is not "a license to thwart competition," but merely an acknowledgement by the Commission that it is wasteful of licensee and permittee resources to permit new applicants to use the coordination process to secure free system design pointers.

STARSYS has no strong objection to dbX's proposal to have the Commission provide informal assistance in the coordination process, but queries how such assistance would be provided when there are mutually exclusive applications from new NVNG MSS entrants. STARSYS notes that the Commission has expressed a reluctance even to require pre-licensing coordination where such an action "would appear to prejudge an application licensing decision." NPRM at 18 n.48.

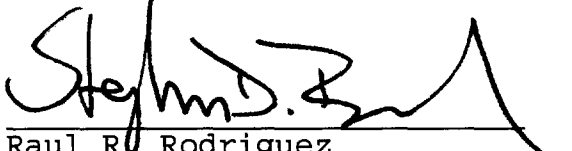
STARSYS does object to dbX's reporting proposals and with its contention that the filing of quarterly progress reports would expedite coordinations. To the contrary, preparation of such reports will divert attention from the task at hand, and probably not be looked at by the Commission. For reasons it provided in its Reply Comments, STARSYS also continues to object to the burdensome proposal to file the detailed coordination agreements themselves. Such information is commercially sensitive, and would not materially facilitate future entry. See STARSYS Reply Comments at 13-14.

III. CONCLUSION

For the reasons stated above, the Commission should conclude that opportunities for future entry are sufficient under the rules proposed in the NPRM. Accordingly, the Commission should reject the sharing analyses and regulatory proposals belatedly proffered by dbX and adopt the NPRM, as proposed to be modified by STARSYS.

Respectfully submitted,

STARSYS GLOBAL POSITIONING, INC.

By: 
Raul R. Rodriguez
Stephen D. Baruch

Leventhal, Senter & Lerman
2000 K Street, N.W.
Suite 600
Washington, D.C. 20006
(202) 429-8970

June 25, 1993

Its Attorneys

TECHNICAL CERTIFICATE

I, Kenneth E. Newcomer, hereby certify that I am a technically qualified consulting engineer. I have reviewed the foregoing "Supplemental Comments of STARSYS Global Positioning, Inc.," and certify, under penalty of perjury, that the technical information presented is complete and accurate to the best of my knowledge, information, and belief.

Dated this 25th day of June, 1993

By: Kenneth E. Newcomer
Kenneth E. Newcomer
Chief Engineer
STARSYS Global Positioning, Inc.

CERTIFICATE OF SERVICE

I, Katharine B. Squalls, hereby certify that true and correct copies of the foregoing "Supplemental Comments of STARSYS Global Positioning, Inc." were sent by first-class postage prepaid mail this 25th day of June 1993 to the following:

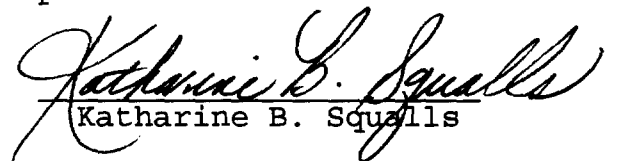
Henry Goldberg, Esq.
Jonathan L. Wiener, Esq.
Goldberg, Godles, Wiener & Wright
1229 Nineteenth Street, N.W.
Washington, DC 20036
Counsel for Volunteers in Technical
Assistance, Inc.

Albert Halprin, Esq.
Stephen L. Goodman, Esq.
Halprin, Temple & Goodman
1301 K Street, N.W.
Washington, DC 20005
Counsel for Orbital Communications Corporation

Robert A. Mazer, Esq.
Albert Shuldiner, Esq.
Nixon, Hargrave, Devans & Doyle
One Thomas Circle, N.W.
Suite 800
Washington, DC 20005
Counsel for dbX Corporation

Dennis James Burnett, Esq.
Franceska O. Schroeder, Esq.
Haight, Gardner, Poor & Havens
1300 I Street, N.W.
Suite 470E
Washington, DC 20005
Counsel for Space Technology Services
International

Karen S. Muller, Esq.
1201 Pennsylvania Avenue, N.W.
Suite 500
Washington, DC 20004
Counsel for Leo One Corporation


Katharine B. Squalls